

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN “DB” BENCH: DEHRADUN**

**BEFORE SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER &  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**[THROUGH VIRTUAL MODE]**

**ITA No.42/DDN/2025**

**[Assessment Year : 2017-18]**

JCIT, Aaykar Bhawan, 13 A, Subhash Road, Uttarakhand	vs	M/s. Times Square, Khasra No.308/309 KA, 309GA, 310, Sahastradhara Road, Village Adhoiwala, Dehradun, Uttarakhand-248001 <b>PAN-AAIFT4183F</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Revenue by</b>		Shri A.S.Rana, Sr.DR
<b>Assessee by</b>		Shri Anil Jain, Adv. & Shri Naman Jain, Adv.
<b>Date of Hearing</b>		09.07.2025
<b>Date of Pronouncement</b>		26.09.2025

**ORDER**

**PER MANISH AGARWAL, AM :**

The present appeal is filed by the Revenue against the order dated 16.01.2025 by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“Ld.CIT(A)”] in Appeal No. NFAC/2016-17/10058045 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 21.09.2021 passed u/s 143(3) r.w.s. 144B of the Act pertaining to assessment year 2017-18.

2. Brief facts of the case are that assessee is a partnership firm, engaged in the development of real estate and in construction

activities. The return of income was filed declaring loss. The case of assessee was taken up for complete scrutiny and order was passed u/s 143(3)/144B dated 21.09.2021 at a total income of INR 1,93,42,890/ against the declared loss of INR 61,45,041/- by making various additions/disallowances.

3. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide order dated 16.01.2025, partly allowed the appeal of the assessee.

4. Aggrieved by the order of Ld.CIT(A), Revenue is in appeal before the Tribunal by taking following grounds of appeal:-

1. *“On facts and circumstances of the case and in law, whether the CIT (A) is justified in deleting the addition of Rs. 2,24,34,000/- made on account of unexplained money under section 69A of the I.T. Act, 1961 accruing to the assessee due to unaccounted cash deposited by it in its bank account.*
2. *On facts and circumstances of the case and in law, whether the CIT (A) while allowing relief to the assessee is correct in placing reliance on the cash flow statement and cash book furnished by the assessee whereas it can be seen from the cash flow statement that, the assessee through the cash withdrawals had artificially augmented cash in hand as no rationale could be found in continuous withdrawals of cash by the assessee despite it having no need to do so.*
3. *On facts and circumstances of the case and in law, whether the CIT (A) has erred in stating at one hand that, the nature of the business of the assessee was such that it warranted expenditures in cash and on that basis accepting that, the source of the cash deposited by it in its bank account were from its earlier cash withdrawals whereas on the other hand he has failed to make a comparison wherein the need of cash withdrawals by the assessee could be assessed vis-a-vis day-to-day expenditures incurred by it.*
4. *On facts and circumstances of the case and in law, whether the CIT (A) is justified in considering the actual sale consideration as full value of consideration in respect of ten properties in view of the provision as contained in the 1 proviso of the section 43CA (1)*

*of the IT Act, 1961 whereas the law specifies that, the same would be applicable prospectively from 01.04.2019.*

5. *That, the appellant craves leave to add or amend any other more ground of appeal as stated above as and when needs for doing so may arise.”*

5. Revenue has filed present appeal against the deletion of addition of INR 26,51,121/- made by AO by invoking the provision of section 43CA of the Act and further deletion of addition of INR 2,24,34,000/- made u/s 69A of the Act r.w.s. 115BBE of the Act towards cash deposits during demonetization.

6. Regarding **Ground of appeal Nos. 1 to 3** taken against the deletion of additions of cash deposit during the demonetization period in Specified bank notes (SBN) in the bank account, Ld. Sr. DR for the Revenue submits that the AO in para 11 of the assessment order has given detailed reasons for not accepting the contention of the assessee that the case was deposited out of the cash balance available in the books of accounts accumulated from cash sales and cash withdrawals made from time to time. He further submits that Ld.CIT(A) has failed to appreciate that the assessee has not claimed any expenditure in the construction despite of repeated withdrawals. He thus requested for the restoration of the addition made.

7. Per contra, Ld. AR submits that assessee is a builder and regularly withdrawing cash for daily business requirements which were duly recorded in books of accounts. The assessee withdrew total INR 2,67,50,000/- upto 08.11.2016 and there was cash balance of INR 2,25,14,952/- available with the assessee as on the

closing hours on 08.11.2016 out of which 2,24,34,000/-were deposited in SBN during the period of demonetization. He submits that books of accounts of the assessee are duly audited, and no defect was pointed out by AO. Ld. AR submits that monthly cash flow statement was also submitted before the AO in support of the cash balance available. Regarding bank withdrawals, it is submitted that assessee was in the process of developing a new real estate project however, the same could not be started and thus, the cash withdrawal remained with the assessee. He further submits that all the details alongwith cash book etc. were submitted before the AO and Ld.CIT(A) after considering these facts, has deleted the additions. He thus prayed for the confirmation of the order of ld. CIT(A).

8. Heard the contentions of both parties and perused the material available on record. Ld. CIT(A) while deleting the addition made a detailed discussion on this issue in para 5.1.1 to 5.1.6 of the order which is reproduced as under:-

**5. CIT(A)'s Decision:**

**5.1 Grounds of Appeal 1 to 4:**

**5.1.1** The appellant's given written submissions, statement of facts and grounds of appeal have been carefully perused. Vide above Grounds, the appellant challenged addition towards Unexplained money u/s 69A of the IT act. During assessment proceedings, the appellant failed to provide documentary evidence towards cash deposit in bank account. Therefore, the AO has made addition towards Unexplained money u/s 69A of the IT act amounting to Rs.2,24,34,000/-.

**5.1.2** During the appeal proceedings, the appellant has submitted that the cash deposited was sourced from opening cash in hand and cash withdrawals



Time Square Mall  
Assessment Year 2017-18  
Monthly Summary of Cash Deposits

Particulars	Cash In hand		Cash Receipts (B)	Cash deposited (C)	Other Cash Outflow (D)	Cash withdrawn (E)	Closing Cash In hand	
	Date	(A)					Date	Amount (A)+(B)-(C)
April	01.04.2016	1,098,546	250	-	1,898,730	2,900,000	30.04.2016	2,100,466
May	01.05.2016	2,100,466	50,000	-	263,289	5,800,000	31.05.2016	7,687,177
June	01.06.2016	7,687,177	-	-	261,594	4,500,000	30.06.2016	11,923,583
July	01.07.2016	11,923,583	202,000	1,000,000	567,271	6,400,000	31.07.2016	16,958,312
August	01.08.2016	16,958,312	42,900	-	406,500	2,850,000	31.08.2016	19,444,712
September	01.09.2016	19,444,712	324,810	100,000	288,569	1,500,000	30.09.2016	20,880,953
October	01.10.2016	20,880,953	73,000	950,000	231,317	1,700,000	31.10.2016	21,477,636
November (upto 08-11-2016)	01.11.2016	21,477,636	24,316	-	82,000	1,100,000	08.11.2016	22,514,952
<b>Total</b>			<b>717,276</b>	<b>2,050,000</b>	<b>4,001,270</b>	<b>26,750,000</b>		

Particulars	Cash In hand		Cash Receipts (B)	Cash deposited (C)	Other Cash Outflow (D)	Cash withdrawn (E)	Closing Cash In hand	
	Date	(A)					Date	Amount (A)+(B)-(C)
November (from 09-11-2016 to 30-11-2016)	09.11.2016	22,514,952	-	22,434,000	101,500	276,000	30.11.2016	255,452
December	01.12.2016	255,452	399,000	-	585,999	300,000	31.12.2016	368,453
January	01.01.2017	368,453	6,000	-	697,499	700,000	31.01.2017	376,954
February	01.02.2017	376,954	-	-	805,070	1,450,000	28.02.2017	1,021,884
March	01.03.2017	1,021,884	32,838	-	1,985,939	1,050,000	31.03.2017	114,783
<b>Total</b>			<b>437,838</b>	<b>22,434,000</b>	<b>4,176,007</b>	<b>8,776,000</b>		
<b>Grand Total</b>			<b>1,155,114</b>	<b>24,484,000</b>	<b>8,177,277</b>	<b>30,526,000</b>		

5.1.3 During the appellate proceedings, the appellant submitted the reason for cash withdrawn in FY 2016-17 and why the same was deposited back in the FY 2016-17. The reasons stated by the appellant are reproduced as below.

**WHY CASH WAS WITHDRAWN IN FY 2016-17:**

We also wish to bring to your notice the fact of the case that the partners of the assessee firm had entered into a new project in the name of Times Infrastructure & Realty Inc. for providing smart living luxury homes at Doon's most iconic address -Dalanwala in January 2016 which was proposed to be completed in December 2017. The assessee firm had withdrawn a major amount for this project which later on did not crystallized due to uncertainty in the real estate market post demonetization and loss of interest by partners to take up this project. The construction project of providing luxury homes with all the amenities started with a zeal with advertisement in the entire city. For developing the new project, the partners of the assessee firm even appointed the structural designers, consultants and engineers for developing and designing the entire project. To support the fact that the new project was actually started, please find enclosed the relevant supporting documents as under:

- Copy of images of advertisement banners for upcoming project displayed all around the city as 'Annexure B'.
- Copy of Invoice for services rendered along with the letter of appointment defining the scope of work to be done by consultants and engineers as 'Annexure C1 & C2'.
- Copy of write up for advertising the upcoming project as 'Annexure D'.

**WHY CASH WITHDRAWAN WAS DEPOSITED BACK IN FY 2016-17:**

When demonetization was announced on 08-11-2016, the assessee was given a small window of 2 months (from 09-11-2016 to 30-12-2016) to deposit back the cash. The assessee very quickly deposited back the cash on 2 dates immediately, as it was not permitted under law to use the old currency. Since the assessee did not take much time to deposit the cash back, it should not be presumed that the assessee generated such cash deposited back into the bank through dubious sources such as fake sales/cash receipt entries obtained from the market etc. after the date of demonetization.

There is not a single entry like this in the books of accounts, as it can be verified from the cash book being submitted.

Thereafter, the real estate market was completely devastated due to the impact of demonetization and hence, there was no need to withdraw a high amount again after the cash was deposited back, as even the new project "GENESIS" for which cash withdrawals might have been required, was shelved. Further, by that time, the old project was already complete and there was not much need to withdraw cash for the old project too. The chart below explains that there was no further major activity in the old project of Times Square Mall:

Particulars	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Opening Stock	11,115,602	49,702,307	46,320,329	20,202,556
Land parked in FA schedule transferred to stock	-	-	7,636,000	-
Purchases incurred during the year	19,191,625	14,721,045	1,412,644	2,888,000
<b>Total</b>	<b>30,307,227</b>	<b>64,423,352</b>	<b>55,368,973</b>	<b>23,090,556</b>
<b>Less:</b>				
Consumption Transferred to Profit & Loss account	-	18,103,023	26,078,954	-
Capitalized as fixed asset during the year	19,395,080	-	9,087,463	-

<b>Closing WIP</b>	<b>49,702,307</b>	<b>46,320,329</b>	<b>20,202,556</b>	<b>23,090,556</b>
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5.1.4 The appellant has provided the details of comparison of the last two Financial years data related to the sales and withdrawal of the cash. The same is reproduced as below.

Particulars	FY 2016-17 (Up to 26-12-2016)		FY 2015-16 (Up to 26-12-2015)	
	Amount (INR)	Ratio to Sales	Amount (INR)	Ratio to Sales
Sales	7,70,78,864	-	13,85,23,005	-
Cash withdrawals - Annual	3,05,26,000	40%	4,42,00,000	32%
Cash withdrawals - Prior to 8 <sup>th</sup> Nov	2,67,50,000	35%	2,98,00,000	22%
Avg. monthly sales (for a period of 12 months)	64,23,239		1,15,43,584	

It has been noticed from the above that cash withdrawal from the bank during the current year has remained at almost the same percentage as compare to previous year i.e. in the range of 32% to 40%. It is also noticed that the appellant firm follows a consistent practice of depositing and withdrawing cash from the bank accounts and the cash withdrawals in the present cash are done as per routine and to conduct normal business activities of the appellant firm and for incurring the day-to-day business expenses.

5.1.5 In the present case, it is important to visit the provisions of section 69A, which is reproduced as below.

**"SECTION 69A. Unexplained money, etc.** [Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by 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 the assessee of such financial year."

**5.1.6** From the above it is clear that where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, the money and the value of the bullion, jewellery or other valuable article will be deemed to be the income of the assessee of such financial year. In the instant case, there is no dispute that the assessee is maintaining books of account and cash withdrawals and deposits are clearly recorded in the books of accounts. Secondly, the nature of the business of the appellant compels expenditure in cash. In this particular case, it is clearly noted that the appellant has kept ready cash in its hand to meet its expenditure and had to deposit the same into the bank accounts in order to regain the financial negotiability of the said cash available in hand due to the exercise of demonetisation. The detailed written submissions along with the documentary evidence submitted by the appellant fortifies its case. Therefore, the explanation given by the appellant that the cash deposited in the bank account during the demonetization period is from his business receipts and cash withdrawal is accepted. Accordingly, the AO is directed to delete the addition of Rs. 2,24,34,000/- u/s 69A of the Act as the nature and source of the said money is proved to be out of books of accounts and is explained. Thus, the grounds raised towards addition made u/s 69A by the appellant stands allowed on law as well as on facts and consequently the rates of taxation levied by the AO under section 115BBE also falls.

9. Before us, Revenue has failed to controvert aforesaid findings given by Ld. CIT(A). It is further seen that assessee has made withdrawals on regular basis from bank which were available with the assessee as recorded in cash book and no defects whatsoever were pointed out by the AO. Assessee has deposited SBN during the demonetization on various dates out of the cash available as on date with assessee as on the closing hours of 08.11.2016 i.e. the date when the demonetization was announced by the Hon'ble Prime

Minister and was the last day upto which the SBN could be accepted as valid currency. The AO is required to consider the records of the assessee such as bank statement, monthly sales, possibility of back-dating of cash sales or fictitious sales etc. before making any allegation about the genuineness of the cash deposited in SBN during the demonetization period. No such adverse observations were made by the AO and results declared were accepted. When the assessee has submitted complete details and thus discharges its onus, whereas no contrary material whatsoever was brought on record by the AO to disprove the details filed by the assessee. At this juncture, provision as contained in section 69A is reproduced as under:

**69A.** *Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by 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 the assessee for such financial year.*

10. From the perusal of the provisions of section 69A of the Act it is very clear that assessing officer can make addition u/s 69A only under following circumstances, i.e.

- (i) the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article **is not**

**recorded in the books of account, if any, maintained by him for any source of income;**

- (ii) No explanation is offered about the nature and source of the same;
- (iii) Explanation offered by Appellant is not upto the satisfaction of Ld. AO.

11. Thus, the primary condition for invoking provisions of section 69A is that there must be books of accounts and such money, bullion, jewellery or valuable article must not be recorded in the same, than the question of explanation arises. If the assessee provides the explanation with regard to the source thereof, before rejecting the same ld. AO has to express his opinion as to why the explanation furnished by Appellant is not acceptable.

12. In the instant case, it is not the allegation of the AO that the assessee has not maintained any books of account or the cash deposited in SBN in bank was not recorded in the books of account maintained. He rather accepted the turnover declared by the assessee which is inclusive of the amount of cash sales which was made in SBN and deposited into bank. Further it is seen that the assessee not only offered explanation regarding nature and source of deposits but also substantiated the same with documentary evidences in the shape of Audited Financial Statements and Cash book. It is not understood as to how the AO could invoke the provisions of section 69A for making addition when the source of

such cash deposits, being cash sales and withdrawals made earlier, which were duly recorded in the books maintained in regular course. Therefore, addition so made u/s 69A of the Act is unjustified.

13. Once books of accounts were accepted, cash recorded therein in the shape of bank withdrawals could not be doubted thus, the cash deposit out of such balance is duly explained. In view of these facts, we do not find any infirmity in the order of Ld. CIT(A) who after considering these facts has deleted the addition and which order is hereby, upheld. Accordingly, grounds of appeal No. 1 to 3 of the revenue are thus dismissed.

14. **Ground of appeal No.4** is with respect to the addition of INR 26,51,121/- being the difference between the value determined by stamp valuation authorities and the sale consideration by invoking the provisions of section 43CA of the Act.

15. Before us, Ld. Sr. DR for the Revenue supported the orders of the AO and submits that the difference was based on the valuation done by DVO and the same being 11.49% of actual sale consideration, therefore, AO has rightly made the additions which deserves to be upheld.

16. On the other hand, Ld. AR for the assessee placed reliance on the judgement of Ld.CIT(A) and requested for the confirmation of the same.

17. Heard both the parties and perused the material available on record. It is seen during the year assessee has sold total 17 properties out of which difference of more than 10% between the valuation done by stamp value authorities and declared sale consideration was in respect of only 07 properties and remaining 10 properties, the difference is less than 10%. Ld.CIT(A) confirmed the addition to the extent of difference being excess of 10% which comes to INR 19,82,471/- and deleted the balance addition of INR 6,68,650/- which is less than 10%. As per section 43CA difference to the extent of 10% is allowable. By Finance Act, 2018, the first proviso to Section 43CA(1) was inserted, and this proviso provided that *"where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration."* This proviso was further amended by the Finance Act 2020, inasmuch as the tolerance band of 5% was increased to 10%.

18. The net result of this amendment is that where the variation in actual sale consideration vis-à-vis the stamp duty valuation does not exceed 10%, the fiction of Section 43CA(1) will not come into play, and therefore, profit and loss will have to be computed with reference to the actual sale consideration only-disregarding the stamp duty valuation.

19. The explanation to The Finance Act, 2018 reads as under,

16. **Rationalization of section 43CA, section 50C and section 56**

16.1 *Before amendment by the Act, for computing income from business profits (section 43CA), capital gains (section 50C) and other sources (section 56) arising out of transactions in immovable property, the higher of sale consideration or stamp duty value was adopted. The difference was taxed as income both in the hands of the purchaser and the seller.*

16.2 *It has been pointed out that the variation between stamp duty value and actual consideration received can occur in respect of similar properties in the same area because of a variety of factors, including shape of the plot or location.*

16.3 *In order to minimize hardship in case of genuine transactions in the real estate sector, section 43CA, section 50C and section 56 of the Income-tax Act have been amended to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five per cent of the sale consideration*

20. The paragraph 16.3 above specifically mentions this amendment is to minimize the hardship in case of genuine transactions in real estate sector. The rationale behind the insertion of the proviso to Section 43CA(1) is to provide a remedy for unintended consequences of the main provision.

21. The Co-ordinate Bench of ITAT in the case of **Wadhvana Housing and Infrastructure Company** in **ITA.NO. 3148/MUM/2022** for A.Y. 2018-19 has held that this amendment is curative in nature and this applicable retrospectively. The relevant observations of the coordinate bench are as under:

8. *Considered the submissions made by the Ld. DR and material placed on record, we observe from the record that the difference between stamp duty value and agreement value having a*

*difference of 4.88% only. We further observe from the grounds of appeal raised by the assessee that assessee has made a plea referring to Finance Act, 2018, which has made an amendment in section with effect from 01.04.2019, the value adopted or assessed by stamp duty authority does not exceed 105% of the consideration received as a result of transfer then it is deemed to be full value of consideration. As per the ground raised, we observe that assessee has claimed that the amendment made to section 43CA are retrospective in nature. On similar proposition, the Coordinate Bench in the case of the Shri Harish H Gandhi v. ACIT [(2022) (6) TMI 1277 - ITAT Mumbai] adjudicated that the amendment made to section 43CA is retrospective in nature in consonance with the amendments made to section 51C of the Act, for the sake of clarity it is reproduced below: -*

*"3.3. .... But we find that there is a proviso introduced by the Finance Act 2018 w.e.f. A.Y.2019-20 onwards and which was later amended by the Finance Act 2020 applicable from A.Y.2021-22, which states that if the difference between the stamp duty value and the reported sale consideration is not more than 10% then, the reported sale consideration shall have to be accepted and no addition in terms of 43CA is required to be made. We find that this amendment has been held to be retrospective in operation by the Co-ordinate Bench decision of this Tribunal in the case of Maria Fernandez Cheryl vs. ITO reported in 123 taxmann.com 252 wherein it was held that amendment made in scheme to Section 50C(1) of the Act by inserting the proviso thereto and by enhancing tolerance band for variations between sale consideration vis a vis stamp duty valuation from 5% to 10% are effective from date on which section 50C itself was introduced i.e. from 01/04/2003 and therefore, having retrospective applicability thereon. The language of provisions of Section 50C are exactly pari materia with provisions of Section 43CA of the Act. Hence, though the aforesaid decision was rendered in the context of Section 50C of the Act, the same analogy would apply for provisions of Section 43CA of the Act also as similar proviso is available in Section 43CA of the Act also. Hence, respectively following the aforesaid decision of this Tribunal, we hold that the difference of Rs.4,42,460/- added by the ld. AO in the assessment falls below the tolerance band of 10% and hence, by applying the proviso to Section 43CA of the Act, no addition is required to be made in the instant case u/s.43CA of the Act. Accordingly, the ld. AO is hereby directed to delete the addition of Rs.4,42,460/- made by him in the assessment. Accordingly, the grounds raised by the assessee are allowed."*

9. *Respectfully following the above said decision, and in the above decision the Coordinate Bench adjudicate that amendment made to section 43CA is retrospective in nature. Accordingly, as per the proviso the percentage up to 5% are outside the provisions of section 43CA of the Act. We observe that, the stamp duty value difference is 4.88% and the same outside the provisions of this section considering the fact the difference is less than 5%. From the above discussion, we are inclined to allow the ground raised by the assessee.*

22. In view of these facts, and we find no infirmity in the order of Ld.CIT(A) who after considering the safe harbour limits as provided in section 43CA has allowed the partial relief to the assessee and accordingly the same is hereby upheld. Ground of appeal No.4 of the revenue is dismissed.

23. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 26.09.2025.

**Sd/-**

**Sd/-**

**(YOGESH KUMAR U.S)**  
**JUDICIAL MEMBER**

**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**

**Date:-26.09.2025**

*\*Amit Kumar, Sr.P.S\**

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