



**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH "SMC", JABALPUR**

BEFORE SHRI KUL BHARAT, VICE PRESIDENT

ITA No. 38/JAB/2024
Assessment Year: 2017-18

Devendra Kumar Gupta 17/304, Venkat Road, Ghoghar, Rewa-486001.	v.	ACIT Circle Satna Income Tax Office, Aaykar Bhawan, Civil Lines, Satna-485001.
PAN: AHAPG6843Q		
(Appellant)		(Respondent)

Appellant by:	Shri Sapan Usrethe, Advocate.		
Respondent by:	Shri N.M. Prasad, Sr.DR-1		
Date of hearing:	16	09	2025
Date of pronouncement:	18	09	2025

ORDER

PER KUL BHARAT, VICE PRESIDENT.:

This appeal, by the assessee, is directed against the order of the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi dated 29.01.2024, pertaining to the assessment year 2017-18. The assessee has raised the following grounds of appeal: -

"1. The learned Commissioner of Income tax (Appeal) of NFAC New Delhi was not justified in confirming the additions made by the AO without considering the reply and documents filed by the appellant during the course of hearing and without following the spirits of faceless appeals scheme and have just passed the order in cyclo style manner to show the disposal against his pendency and on reading of order it appears that it was passed in any other law and in income tax law and deserves to be quashed with heavy cost .

2. The learned Commissioner of Income tax (Appeal) of NFAC New Delhi was not justified in confirming the additions made by the AO only on the basis of assumption and presumption as he failed to understand that in income tax proceeding there is no room for making such absurd observation without pointing out any of the defects in the books of accounts and reply and documents filed before him.

3. The learned Commissioner of Income tax (Appeal) of NFAC New Delhi was not justified in confirming the addition made by the AO under section 68 without satisfying the conditions laid down in section 68 and mechanical order was passed which is bad in law .

4. The learned Commissioner of Income tax (Appeal) of NFAC New Delhi was not justified in confirming the action of AO without appreciating the fact that appellant have duly filed the figures of earlier year also and further there was sufficient cash balance in the appellant cash book which was not been disturbed and addition was made without even pointing out any of the defects in purchase, sales and stock position.

5. The appellant craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal.”

2. The facts giving rise to the present appeal are that in this case the assessee filed his return of income on 24.11.2017 for the relevant assessment year 2017-18 through electronic mode, declaring total income of Rs.20,90,460/- and agriculture income of Rs.2,54,710/-. The assessee is proprietor of M/s. Ramesh & Company which is engaged in the business of trading of agricultural equipment, pipe and related items. Thereafter, the return was processed u/s 143(1) of the Income Tax Act, 1961 (“Act”, for short) by Central Processing Centre (CPC). Subsequently, the case was selected for complete scrutiny through Computer Assisted Scrutiny Selection (CASS). Therefore, a notice u/s 143(2) of the Act was issued on 25.09.2018 and duly served upon the assessee. Thereafter, a statutory notice u/s 142(1) of the Act was issued to the assessee calling upon the various information regarding computation of the profit. The Assessing Officer noted that on perusal of the month-wise sales for the F.Y. 2017-18, it was noted that the assessee had shown abnormal sales during the period 01.11.2016 to 08.11.2016. The assessee had shown cash sales of Rs.16,69,460/- during the period of 8 days against the total/cash sales of Rs.2,61,96,751/- made during the entire F.Y. 2016-17. The average sales for 8 days comes to Rs.5,74,175/- and considering this average sales of 8 days the assessee had declared excessive sales of Rs.16,69,460/- which is exceeding of Rs.10,95,285/-. Therefore, he treated the sales as bogus and made addition of the excess sales amounting to Rs.10,95,285/-. Aggrieved by this order, the

assessee preferred appeal before the Ld. CIT(A) who also sustained the addition and dismissed the appeal of the assessee. Now the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal, the Ld. Counsel for the assessee submitted that the authorities below have failed to appreciate the facts of the case in right perspective. He contended that the account of the assessee has been accepted there is no adverse remark made by the lower authorities regarding account of the assessee. He further submitted that the sales were duly reflected in the Vat and ET returns of the relevant year. Therefore, there was no occasion to suspect the sales and treat it as unexplained.

4. On the other hand, the Ld. the Ld. Departmental Representative (DR) supported the orders of the lower authorities and contended that looking to the sales as claimed by the assessee during the particular period, when the demonetization period was vogue the assessee claimed higher sales. Therefore, looking to the '*Preponderance of Probability*', the authorities were justified for making the addition.

5. Heard the Ld. Representatives of the parties. Admittedly, the Assessing Authorities has not doubted the purchase of the assessee. The Assessing Officer has also not made any adverse comment about the accounts of the assessee. The Ld. CIT(A) without adverting to the factual matrix related to the sales and purchases made by the assessee proceeded to confirm the addition purely on the basis of conjectures and surmises. For the sake of clarity, the relevant findings of the Ld. CIT(A) is reproduced as under: -

“5.1.1 During the course of assessment proceedings, on a perusal of the monthly sales for the F.Y. 2016-17, the AO found that the appellant has shown abnormal sales during the period 01.11.2016 to 08.11.2016. The appellant had shown cash sales of Rs.16,69,460/- during the period of 8 days against the total/cash sales of Rs. 2,61,96,751/- made during the entire financial year 2016-17. The average sales for 8 days was Rs. 5,74,175/- ($2,61,96,751 \times 8/365$). Considering the average sales of 8 days the appellant had shown the sales of Rs. 16,69,460/- for 8 days during the period 01.11.2016 to 08.11.2016 which exceeded Rs 10,95,285/- ($16,69,460 - 5,74,175$) and was added to the income of the appellant.

5.2 It is pertinent to understand the facts, circumstances and ground realities of demonetization period i.e. from 09.11.2016 to 31.12.2016. On the evening of 08.11.2016 at 8.15 p.m., in a surprise announcement, demonetization of old Rs.500/- and Rs. 1000/- notes was announced by the Government of India and the demonetization came into effect from 00.00 hrs of 9.11.2016. All the citizens of the country were given option to deposit old demonetized currency notes of Rs. 500/- and Rs. 1,000/- held by them as on 08.11.2016 by 31.12.2016 in their bank accounts besides nominal amounts of Rs. 2,000 to Rs. 4,500 which could be exchanged from banks or withdrawn from ATMs. During the period 09.11.2016 to 31.12.2016 there was virtually no liquidity in the country. Therefore, all the major business cash transactions in the month of November, 2016 took place only for 8 days from 01.11.2016 to 08.11.2016 in old currency notes of Rs. 500/- and Rs. 1000/- only.

5.3 Demonetization was an unexpected announcement with the purpose of curbing black or parallel economy of the country. Owing to sudden announcement of demonetization, persons who had accumulated their unaccounted income as on 08.11.2016 in the form of cash of old Rs. 500/- and Rs.1000/- currency notes were left with no option but to deposit their unaccounted income in their bank accounts or stand losing the entire money.

5.4 It is relevant to mention here that the Hon'ble Supreme Court in the case of Commissioner of Income-Tax vs. Durga Prasad More (214 ITR 801) held that human probability and circumstantial evidence has to be kept in mind to decide the genuineness of the transactions. The Hon'ble court observed that

“Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal, Therefore the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities. Human minds may differ as to the reliability of a piece of evidence. But in that sphere the decision of the final fact finding authority is made conclusive by law.”

5.5 The Hon'ble ITAT, Delhi, in the case of Hersh Win Chadha Vs DCIT (I.T.A. Nos. 3088 to 3098 & 3107/Del/2005), held that “The admissibility of documents, evidence or material differs greatly in income tax proceedings and criminal proceedings respectively. In criminal proceedings, the charge is to be proved by the State against the accused, establishing it beyond doubt, whereas as per the settled proposition of law, the income tax liability in the cases of suspicious transactions is ascertained on the basis of the material available on record, the surrounding circumstances, human conduct and preponderance of probabilities.”

5.6 The Hon'ble Supreme Court by placing reliance on its own judgment in the case of Durga Prasad More, observed the following in the case of

Sumati Dayal vs. Commissioner of Income-Tax 1995 AIR 2109: "As laid down by this Court, apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities."

Quite clearly, in the case of the appellant, the 'apparent' is not the 'real'; the 'apparent' wears the mask of legitimacy, while the 'real' is a sham and a farce. According to Oxford English Dictionary, a 'sham' means "a thing that is not what it is purported to be". What is 'purported to be' in this case is an attempt made by the appellant to explain its unexplained deposits because due to the sudden announcement of demonetization it had no option but to deposit the unexplained money into banking system. What is 'real' actually is an elaborate design to mislead the revenue authorities and other arms of the Government, conversion of black money into white, and willful evasion of taxes through deliberate planning and strategy.

And when that is the case, one must not forget the timeless wisdom espoused by the apex court in McDowell & Co. Ltd. Vs The Commercial Tax Officer 1986 AIR 649:

"Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.

6. In view of above detailed discussion and various legal and factual aspects of the case, it is concluded, on the basis of facts, circumstances and preponderance of probabilities, that the explanation furnished by the appellant as source of cash deposit during demonetization period is a part of afterthought story in an attempt to explain the source of cash deposits during demonetization. It is further pertinent to reiterate that the sudden and unexpected announcement of demonetization caught the appellant unaware and it had no option but to deposit unexplained cash in to bank which now it is trying to pass off.

6.1 It is well settled principle that the onus is on the appellant to prove the genuineness of these transactions and once the appellant has failed to discharge this onus it is open for Revenue to arrive at conclusion based on facts and circumstances of the case. Thus, in view of above discussion an amount of Rs.10,95,285/remains unexplained and was rightly added by the assessing officer."

6. Therefore, in the absence of any adverse finding with regard to the accounts of the assessee and the other supporting evidences in the form of copy of VAT and ET return submitted by the assessee. I am of the view that the lower authorities were not justified in making the addition and treating the sales as bogus more particularly without commenting upon the purchases and availability of stock at the time when the assessee had claimed cash sales. The assessee from the records has demonstrated that

it had sufficient stock for making cash sales. Under these facts, I hereby direct the Assessing Officer to delete the impugned addition. Grounds of appeal of the assessee are allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 18/09/2025.

Sd/-
[KUL BHARAT]
VICE PRESIDENT

DATED: 18/09/2025

Vijay Pal Singh, (Sr. PS)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

By order

// True Copy//

Assistant Registrar
ITAT, Jabalpur