आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा॰ एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No.101/JPR/2025
निर्धारण वर्ष/Assessment Years : 2017-18

Sh. Kailash Chand Meena A-32, Malviya Nagar, Alwar.	बनाम Vs.	The ITO, Ward-2(3), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AVNPM6060G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Shrawan Kumar Gupta, Adv.
राजस्व की ओर से/ Revenue by : Shri Gautam Singh Choudhary, JCIT

सुनवाई की तारीख/ Date of Hearing : 23/07/2025
उदघोषणा की तारीख/Date of Pronouncement : 30 /09/2025

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This is an appeal filed by the assessee against the order of ld. CIT(A), National Faceless Appeal Centre (NFAC) Delhi dated 02.08.2023 passed under section 250 of the I.T. Act, 1961, for the assessment year 2017-18.

2. The assessee has raised the following grounds of appeal :-

"1.1 The impugned order u/s 143(3) of the I.T. Act, 1961 dated 06.12.2019 as well as the action taken and notices u/s 143(2) or other notices are illegal, bad in law and on the facts of the case for want of jurisdiction and various other reasons or barred by limitation and further contrary to the real facts of the case, hence the same may kindly be quashed.

1.2 The ld. CIT (A) has grossly erred in law as well as on the facts of the case in passing the Ex-party order, without providing adequate opportunity of being heard in gross breach of law which are bad in law, invalid, illegal and on facts of the case. Hence the order so passed by the ld. CIT (A) in gross breach of law and against the principal of natural justice and liable to be quashed and entire additions so made by the ld. AO may kindly be deleted.

2.1. Rs. 10,60,000/-: The ld. CIT (A) has grossly erred in law as well as on the facts of the case in sustaining/confirming the addition ofRs. 10,60,000/- made by the ld. AO u/s 69A on account of cash deposited in the bank account as alleged unexplained investment u/s 69A, also erred in ignoring the other material, evidence and facts available on record. Hence the addition so made by the ld. ?AO and confirmed by the ld. CIT (A) is also contrary to the real facts of the case and not according to the provisions of law, hence the same may kindly be deleted in full.

2.2. The ld. CIT (A) has grossly erred in law as well as on the facts of the case in confirming the action of the ld. AO of invoking the provisions of Sec. 115BBE as the ld. AO had not issued any show cause notice for the same, also not invoked the same in the assessment order and charged the tax u/s 115BBE in the computation sheet directly, also erred in not considering the material and details in their true perspective and sense despite available on record. Hence the action of the ld. AO and confirmed by the ld. CIT (A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice hence the same may kindly be deleted in full.

3. The ld. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B, C. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full.

4. That the appellant prays your honour indulgences to add, amend, alter of or any of the grounds of the appeal on or before the date of hearing."

3. We find that the appeal filed by the assessee is delayed by 451 days. The assessee has filed an application submitting therein the reasons for delay in filing the appeal and prayed for

condonation of delay. In support of the application, the assessee has also filed an Affidavit duly sworn in before the Notary, Jaipur dated 24th January, 2025 for condonation of delay, which is being reproduced hereunder :-

> I, Kailash Chand Meena S/o Sh. Kishan Lal Meena, Aged 45 years, R/o A-32 Malviya Nagar, Alwar, Raj. 301001, do hereby solemnly affirm on oath as under :-
>
> 1. That I am a IT Assessee and My PAN is AVNPM6060G.
>
> 2. That an appeal is being filed by me before your honor for A.Y. 2017- with the delay of about 16 month 25 days. Although in actually there is no delay after coming in my knowledge about the order.
>
> 3. That the ld. CIT (A) has passed the order on dt. 02.08.2023 which was not served upon me physically. However, as per date of order the appeal was to be filed on or before dt. 01.10.2023 but the same is being by delay of about 16 month 25 days. Although in actually there is no delay if following facts are being considered.
>
> 4. The reason of late filing was that the order was not served physically. The same was send by on Email cadharmendragupta@rediffmail.com, sharmasandy755@gmail.com. These email was of my earlier counsel. As I had left the earlier counsel much before that is why while filing the appeal before the ld. CIT (A) I had updated the email id on the Income Tax Portal and had given his email id mukeshgupta749@gmail.com, kailashmeenasurer@gmail.com which is also coming on the form 35 vide page 1 of the form 35, as in the ITR's the email ID is also appearing mukeshgupta749@gmail.com, and continue. As the earlier counsel has not informed to me as he was under impression that the I have changed the counsel and having the knowledge of the order. It is only on some time before when I have received the information on the mobile from the department regarding the demands and penalty, then I contacted to the new counsel and the new or later counsel has checked the IT portal on then he also checked the status of this quantum appeal and then I have come to know that the CIT (A) has also passed the order in this quantum appeal on dt. 02.08.2023, then the new counsel immediately stated that I have not received such order earlier. Thus I have come to know that the

CIT (A) has passed order or dismissed the appeal, then I asked to the counsel to take the necessary step and to prepare and file the appeal as I was not having the knowledge of orders earlier.

5. That thereafter my other counsel at Jaipur has stated to file the appeal with the condonation of delay being the sufficient cause and there is a strong case in our favour, thereafter he has started to prepare the appeal and the appeal has been prepared on dt. 23.01.2025.

6. That it is also submitted that I had engaged a counsel to file the IT matter and under impression that he is taking care of the matter, as I was depended upon him. Thus there was no negligence's of my new counsel, the negligence's was of the earlier counsel if any (although should not being). Thus it has never come in my notice before January 2025 that any order has been passed, otherwise I could have contacted to the counsel and filed the appeal. Thus there was a bonafide mistake of the counsel if any.

Due to all this reason the appeal could not be filed within time. In support of these contention affidavit of assessee is enclosed.

7.That there is a sufficient cause of delay in filing the appeal before ;your honor as per section 5 of Limitation act.

8.That our present counsel or advocate has advised to me to file the appeal immediate with the prayer for condonation of delay, being the reasonable ground and being a strong case in my favor.

9.That due to all this reason the appeal could not be filed within time.

10.That the contents or averment of application for condonation of delay are true and correct and may be treated as part of this affidavit.

Place : Jaipur
Date : 01.2025 Sd/-

Deponent

VERIFICATION

I, Kailash Chand Meena S/o Sh. Kishan Lal Meena, Aged 45 years, R/o A-32 Malviya Nagar, Alwar, Raj. 301001, do hereby verified that the contentions of above paras 1 to 8 are true and correct to the best of my knowledge and belief, nothing has been concealed God may help me.

Place : Jaipur.
Date: 01.2025. Sd/-

Deponent

"

4. Considering the reasons mentioned in the said application accompanied by an Affidavit of the assessee, we feel that the reasons mentioned in the Affidavit that the assessee was not in receipt of the impugned order and thereby it constitute sufficient cause for not filing the appeal within the time before us. Therefore, taking a lenient view and considering the principles laid down in the case of Collector, Land Acquisition vs. Mst. Katiji, 1987 AIR 1353 (SC), we condone the delay of 451 days in filing the appeal before us.

5. The brief facts of the case are that the assessee e-filed his return of income for the assessment year 2017-18 on 13.06,2017 declaring income of Rs. 4,02,330/-. Later on revised return of income was filed on 21.06.2017 declaring income of Rs. 6,31,330/- . The case of the assessee was selected for Limited Scrutiny and the issue identified for taking up the case under scrutiny was "Cash deposit during demonetization period". During the scrutiny proceedings, the AO found that the assessee has deposited a sum of Rs. 10,60,000/- in his bank account with PNB. Notices under section 142(1) along with questionnaire were issued to the

assessee on 03.07.2019, 27.08.2019, 07.10.2019 but no reply received. Thereafter, in reply to notice under section 142(1) issued on 13.11.2019, the ld. AR of the assessee filed required details including bank account statement. On 29.11.2019 the AO issued a Show Cause notice to the assessee to file his reply on the cash deposited by him of Rs. 10,60,000/- during demonetization period. The assessee submitted that out of Rs. 10,60,000/- deposited in his bank account, a sum of Rs. 4,00,000/- was cash balance available with him as on 08.11.2016 and the remaining amount of Rs. 6,20,000/- was received as cash loan from 33 persons ranging from Rs. 18,000/- to Rs. 19,500/-. The AO noted that the said cash deposits were made in the account, which were Over draft Accounts (OD) with long outstanding dues in them. Moreover, not satisfying with the claim of appellant of having received cash loans from 33 parties, the details of which were never provided to the AO, the AO completed the assessment by making an addition of cash deposits in bank account totaling to Rs. 10,60,000/- under section 69A of the IT Act as unexplained cash deposits in the absence of any satisfactory details or explanation. Aggrieved by the order of the AO, the assessee filed appeal before the ld. CIT (A), who sustained the addition by confirming the AO's order.

Aggrieved by the order of the ld. CIT (A), now the assessee has preferred the present appeal before the Tribunal.

6. Before us, the ld. AR of the assessee submitted that both the lower authorities were not justified in making/confirming the addition. The ld. AR submitted the following written submissions in support of his case :-

> "GOA1-2 Invalid assessment and Addition of Rs.10,60,000/- on account of cash deposited in the bank account:
>
> FACTS: The brief facts of the case that the assessee is a regular IT assessee. He was having income from business and house property, agriculture, other source. He has filed his ITR on dt. 13.06.2017 declaring the total income of Rs.4,02,330/-. In this case the ld. AO has issued the notice u/s 143(2) on dt. 24.09.2018 on the reason " cash deposited during the demonetization"
> Thereafter the ld. AO has issued the notice u/s 142(1) in response thereto the assessee filed the reply and details also stated that out of Rs.10,60,000/- deposited in his accounts a sum of Rs.4,00,000/- was cash balance available with him during the period as on 08.11.2016.The remaining amount of Rs.6,20,000/- deposited was received as loan from 33 persons.
>
> The ld. AO has noted that during the year assessee deposited a sum of Rs.10,60,000/- in cash in his various account with PNB during the demonetization period. On going through the bank statement of the OD A/c maintained by the assesse in PNB it was observed that assessee had an closing balance debit balance of Rs.21,96,850/- as on 31.03.2016. From 01.04.2016 to 11.11.2016 assesse had deposited in cash a sum of Rs.2,50,000/- in cash in his OD A/c and interest of Rs.1,35,394/- had been debited to his account. The opening debit balance as on 11.11.2016 was Rs.20,48,244.95/-. On 11.11.2016 assesse had deposited in cash a sum of Rs.6,00,000/- in his account. Similarly, on going through the JCB Loan account it was observed that assesse had a debit balance of Rs.19,44,701/- on 01.04.2016. During the period 01.04.2016 to 21.1.0.2016 no deposits were made in this loan account. On 11.11.2016 assesse deposited a sum of Rs.4,00,000/- in this account. On 21.10.2016 debit balance of Rs.20,79,674/- was existing in this account. On this basis the ld. AO has assumed that assesse never had money to deposit in his loan account/OD account. Therefore, the fantastic story invented about the

rent received from house property and hire charges received from JCB are indeed not based on facts. If this had been a real story he would have deposited installments of his JCB in an even manner and not in haphazard way. It so appears that this sum of Rs.10,60,000/- is someone else's money deposited by the assesse in his bank account. He has himself submitted that he had taken loan from 33 persons ranging from 18,000/- to 19,500/- amounting to Rs.6,20,000/- in cash. This story has been built as a façade to circumvent the law; because the law does not permit a person to take loan of Rs.20,000/- and above from another person. It would not be out of context to quote section 269SS of the Income tax Act,1961. The assesse could not prove the creditworthiness and genuineness of the transaction from the persons from loan has been taken. The loan transactions appear to be dubious in nature. The has failed to discharge his onus to prove that the transaction was genuine and he has not been able to discharge that therefore, the sum of Rs.6,20,000/-is added to the income of the assesse under section 69A of the Income tax act, 1961 as unexplained investment. Further, assesse has not been able to produce any documentary evidence that he had cash balance of Rs.4,40,000/- with him during the year. Therefore, the sum of Rs.4,40,000/- is added u/s 69A as unexplained investment.

Thus the ld. AO has made addition of Rs.10,60,000/- u/s 69A and also charged tax u/s 115BBE without issuing any show cause notice.

In first appeal the ld. CIT(A) has confirmed the order of the ld. AO without going in to consideration material available on record. Hence this appeal.

SUBMISSIONS:

1. No any Show Cause Notice before invoking the provisions of Sec. 69A and 115BBE: At the very outset it is submitted that on the perusal of the assessment order , record and notices it is very clear that the ld. AO before invoking provisions of 69A for making the addition and before invoking the provisions of Sec. 115BBE in the computation Sheet has never confronted the provisions. The assessee has produced the details thereafter he has also not asked any further information and he has also not given a show cause notice before invoking the provisions of Sec. 69A and 115BBE, which is against the provision of law and against the legal position..

1.1 In the case of CIT v/s Pramjit Sing 231 Taxman 0450(P&H) it has been held that*WhenAssessee is not given opportunity to confront with material relied upon by AO during assessment proceedings and amount in question cannot be treated as loan given by Company to Assessee being deemed income as per provisions of S. 2(22)(e), no addition can be made on account of deemed dividend*

1.2 ITO v/s Chitalia Builders 90 CCH 405(Guj) it has been held that Insofar as the deletion of addition is concerned, we find that the A.O was notconfronted with any defects in the books of accounts maintained by the assessee. The A.O has not given any valid reasons for not accepting the cost shown by the assessee though he accepts that the method of accounting was mercantile. Hence, in our opinion, the deletion was justified.

1.3 In CIT v/s Oasis Hospitalities 333 ITR 119(Del) it has been held that In IT Appeal No. 2093 of 2010 and IT Appeal No. 2095 of 2010, the assessees filed copies of PAN, acknowledgement of filing IT returns of the share applicant companies and their bank account statements for the relevant period, i.e., for the period when the cheques were cleared. However, the parties were not produced in spite of specific direction of the AO instead of taking opportunities in this behalf. Since the so-called directors of these companies were not produced on this ground coupled with the outcome of the detailed inquiry made by the Investigation Wing of the Department, the AO made the addition. This addition could not be sustained as the primary onus was discharged by the assessee by producing PAN, bank account, copies of IT returns of the share applicants, etc. The AO was influenced by the information received by the Investigation Wing and on that basis generally modus operandi by such entry operators is discussed in detail. However, whether such modus operandi existed in the present case or not was not investigated by the AO. The assessee was notconfronted with the investigation carried out by the Investigation Wing or was given an opportunity to cross-examine the persons whose statements were recorded by the Investigation Wing. As regards discrepancies found by the AO in the bank statement, suffice is to mention that the bank statements that were filed by the assessee were provided by the shareholders and were computer printed on the bank stationery. The same were filed by the assessee during the assessment proceedings without any suspicion of their being incorrect. During the assessment proceedings, the assessee was never confronted by the AO that there are discrepancies between the bank statements filed and the statements directly called by the AO. However, even after considering the alleged discrepancies, it does not follow that the amount of share capital was the undisclosed income of the assessee. Even the correct bank statements as claimed by the AO reveal that the assessee has received cheques from the shareholders. Therefore, there is no merit in these two appeals, which are accordingly dismissed at the admission stage itself.—CIT vs. K.C. Fibres Ltd. (2010) 187 Taxman 53 (Del) followed.

1.4 Thus the AO made the addition without providing any opportunity of being heard to the assessee nor he issued any show cause notice before making such addition and invoking the sec. 115BBE. During the course of assessment proceeding the ld. AO only required the

assessee to file the details relating to cash found. In response thereto the assessee admittedly filed the details and produced the books of accounts.After receiving details of he did not ask the assesseeany further details. Therefore, a sum of Rs.15,45,040/- is added to the total income under sec 69A and invoking the provisions of Sec. 115BBE is illegal, invalid and liable to be deleted. In support we are enclosing herewith the all the notices issued by the ld. AO and order sheet(PB).

1.5 On perusal of above notices it is clear these nowhere the ld. AO has given or issued any show cause notice before making the additions or allegations or invoking the provisions of 69A and Sec. 115BBE. The ld. AO has not brought any allegation in the notice of the assessee before making the same and it was mandatory on the part of the ld. AO to issue the specific show cause notice to this effect asking to the assessee as to why the income should not be taxed as above before doing so. It is very settled legal position that a person(assessee) is entitled to opportunity to show cause as to why not the income of the assessee is determined and charged or taxed in the manner as proposed by the Assessing Officer but in the instant case no such type of opportunity had been provided hence the addition so made may kindly be deleted. But the ld. AO has failed to do so, which is against the principal of natural justice and against the law. Thus how the ld. AO can make the addition of alleged unexplained income and also cannot invoke the provisions of Sec. 69A and 115BBE. Hence the entire additions are liable to be deleted. in full kindly refer Sanghi Brothers (Indore)Limited v/s Inspecting ACIT 122 CTR 19(MP), Malik Packaging v/s CIT 284 ITR 374 (All), T.C.N. Menon v/s ITO 96 ITR 148(Ker).

Thusit is the settled law that no addition can be made without issuing the show cause notice or without confronting to the assessee.

1.6 In the case of Shreyas Builders &Anr. vs. M.d.Kodnani&ors.* (2000) 161 CTR 0527 : (2000) 242 ITR 0320 it has been held that *A perusal of the show-cause notice shows that it neither discloses the material nor the reasons. It is a cryptic notice. It does not indicate the material on the basis of which the Appropriate Authority reached the tentative conclusion that the transaction is undervalued. It also does not disclose any reason why the Appropriate Authority has reached the tentative conclusion that the transaction has been undervalued. It is further to be seen here that in ground (b) of the petition a grievance in this regard has been made by the petitioners and in the affidavit in reply filed by the respondent/ competent authority, the competent authority does not state the reasons for non-disclosure of the material as also the reasons in the show-cause notice. The basic approach of the authority is erroneous. Unless the Appropriate Authority discloses the reasons why it prima facie finds that the transaction is under valued, the person to whom the show-cause notice is issued would not be able to put up a*

defence. Thus issuance of such show-cause notice would defeat the very purpose for which the show-cause notice is required to be issued. A show-cause notice which does not disclose the material on the basis of which the Appropriate Authority has reached the tentative conclusion that the transaction has been undervalued and the reasons for reaching that tentative conclusion is a defective show-cause notice and, therefore, an order made on the basis of that show-cause notice would be an incompetent order and, therefore, liable to be set aside.— Mrs. Nirmal Laxminarayan Grover vs. Appropriate Authority (1997) 139 CTR (Bom) 40 : 1995(2) Mh. L.J. 755 : TC S3.267 followed;C.B. Gautam vs. Union of India (1992) 108 CTR (SC) 304 r/w (1993) 110 CTR (SC) 179 : (1993) 199 ITR 530 (SC) : TC S3.142 relied on.

Also refer recent decision of this honble Tribunal in the case of M/s MotisonsJewellers Ltd in ITA No. 161 & 178/Jp/2022 dt. 29.09.2022. Copy enclosed.

1.7. This sec. 115BBE is charging of tax at the higher rate and it cannot be applied directly without giving any show cause notice when the issue are disputed that whether the higher rate of tax applicable or not on the alleged income or the nature of income falls u/s 69A and 115BBE. Hence it was mandatory on the part of the ld. AO to issue show cause before invoking the provisions u/s 115BBE, in absence of the same the rate cannot be charged more than to normal rate of tax, if the addition if any sustained.

1.8 Recently the Honble ITAT Jodhpur Bench Jodhpur in the case of Smt. Suraj Kanwar Devraa v/s ITO Ward 2(2) Udaipur in ITA No.50/Jodh/2021 dt.23.11.2021, It has been held that “the AO has not issued any show cause notice before invoking the provision of Sec. 115BBE for taxing the income on higher rate. It was mandatory on the part of the AO to issue the specific show cause notice to this effect asking to the assessee as to why the income should not be taxed under sec. 115BBE before doing so. It is very settled legal position that a person (assessee) is entitled to opportunity to show cause as to why not the income of the assessee is determined and charged or taxed in the manner as proposed by the A.O. but in the instant case no such type of opportunity had been provided but the AO has failed to do so, which is against the principal of natural justice and against the law. This sec. 115BBE is charging of tax on a higher rate and it cannot be applied directly without giving any show cause notice when the issue are disputed that whether the higher rate of tax applicable or not on the alleged income or the nature of income falls u/s 68/69 and 115BBE. Hence it was mandatory on the part of the AO to issue show cause before invoking the provisions u/s 115BBE, in absence of the same the rate cannot be charged more than to normal rate of tax, if the addition if any sustained.

2.Further provisions of Sec. 115BBE at the higher rate is not applicable for A.Y. 2017-18:

2.1 In the case of SureshbhaiBhiukhabhai Patel v/s ITO Ward-1 Bardoli in ITA No. 657/SRT/2024 dt. 14.11.2024 it has been held that

" 10. So far as taxing the addition under section 115BBE is concerned, I find that Divisions Bench as well as SMC Bench of this Tribunal in a series of case has held that enhance rate prescribed under section 115BBE is not applicable for AY 2017-18, reference is made in case of Samir Shantilal Mehta Vs ACIT ITA No. 42/Srt/2022 (Surat Trib), Arjunsinh Harisinh Thakor Vs ITO in ITA No. 245/Srt/2021 and in Jitendra Nemichand Gupta Vs ITO ITA No. 211/Srt/2021 and Indore Bench in DCIT Vs Punjab Retail Pvt. Ltd 677/Ind/2019 (Indore Trib) and Jabalpur Bench in ACIT Vs Sandesh Kumar Jain in ITA No. 41/Jab/2020"

2.2 Also kindly refer recent decision of Honble ITAT Delhi Bench in in the case of Deepak Sharma V/s ACIT, Circle43(1) New Delhi in ITA No. 2886/Del/2022 dt.26.03.2025 where it has been held that So far as assessee;s assessment u/s 115BBE of the Act is concerned .Honble Madras High Court in Smile Microfinance Ltd. v/s ACIT in WP(MD) no. 2078 of 2020 & 1742 of 2020 dt. 19.11.2024(Mad) has already settled the issue against the department that the law applies to the transaction on or after 01.04.2017. Order accordingly

2. The correct facts, evidences and material available on record not rebutted rather ignored or not considered properly:- 2.1: As the assessee is a regular IT assessee. He was having income from business, house property, JCB hiring, other source. He is filli9ng his ITR regularly from last so many years. The most of the income coming in cash and being accumulated year to year. As asessee had deposited Rs.10,60,000/- in cash during the year. As before issue the notice u/s 143(2) , the ITO Ward 2(3), Alwar had issued the notice on dt. 14.03.2017(PB11) for inquiry the cash transaction during the Demonetization period. In response thereto the assessee had filed the reply and details vide (PB12-16), this facts have also been brought in the knowledge of the ld. AO during the course of assessment proceedings vide (PB 4, 24) where in support assessee had also filed the affidavits from the persons from whom loans of Rs.6,20,000/- were taken and their statements were also recorded. Further if there is no any contrary thing and material on the documents and details submitted the same should be accepted and the additions so made liable to be deleted.
2.2 The ld. AO has not rebutted the affidavit filed by the assessee and the contention made in the letter of affidavit should be accepted as truth unless rebutted. Because these affidavits have not been rebutted by lower authority by bring any contrary evidence or without examining.

It is very settled legal position that in the cases where affidavit has been filed yet the contents thereof have not been rebutted by the AO/authority, the facts mentioned therein have to be read as the facts binding upon the Income Tax authorities. Kindly refer Mehta Pareek& Co. 30 ITR 181 (SC), ITO v. Dr. TejgopalBhatnagar 20 TW 368 (Jp) Paras Cotton Company vs. CIT (2003) 30 TW 168 (JD)., CIT v/s Lunard Dimond Ltd. 281 ITR 1 (Del). Recently in CIT v/s Bhawani Oil Mills (P) Ltd 239 CTR 445/49 DTR 212(Raj.)- It has been held that contents of affidavit could not be treated as of a lesser importance than the statement given by the creditor before the AO.

Recently this Honble ITAT in the case of Narayani Bai Dangi v/s ITO Ward 2(1), Udaipur in ITA No.22/Jodh/2022 dt.13.10.2023 it has been held that we respectfully relied on the order Mehta Parikh & Co, (supra). The revenue has not acted in proper manner to verify the nature of land and had not confronted the affidavit filed by assessee. The ld. DR was unable to submit any contrary judgment against the submission of the assessee. In our considered view, the revenue has not taken any pain to complete the verification or has not confronted the affidavit of the assessee during the appeal stages. So, the ground of the assessee is accepted by the bench. We set aside the appeal order and the addition amount to Rs. 15,53,112/- is quashed.

Also refer the decision of Vimal Chatur v/s ITO Ward 2(2), Udaipur 351/Jodh/2023 dt. 26.04.2024 where the it has been held that

We have heard the rival contention and perused the material placed on record. We observed that the assessee and his wife namely Smt. Kanak Lat Chajed both are Senior Citizen, Retired Govt. Employee and pensioner. The assessee has filed the cash flow statements of last five years available at page 16 of the CIT(A) order and at page 18 of the paper book alongwith cash flow statements. The assessee has also filed the day wise cash withdrawals and deposit which are available at Page 19 to 30 of paper book. The lower authorities have only doubted the cash flow statements but could not disproved with any contrary evidences about the withdrawal of cash and its source. The assessee has also filed a family settlement of her wife family vide PB31-32, where she got Rs.3,61,000/- which is also available with the assessee and the lower authorities has discarded or disbelieved without examining and without bringing any adverse evidence. The assessee has also filed the affidavit of his wife namely Smt. Kanak Lata Chhajed before CIT(A), which is produced before us at page 16-17of paper book. We note in the affidavit she clearly stated that the bank accounts were jointly owned and she had deposited the cash of Rs.15,59,000/- in these bank accounts, this affidavit has also been remained uncontroverted. It is settled law that the contents of an affidavit should be read correct and full unless not controverted.

8.1 To support his arguments the Ld. AR for the assessee has also drawn our attention to the judgments of Hon'ble Supreme Court in the case of Mehta Parikh & Co. v. Commissioner of Income-tax, [1956] 30 ITR 181 (SC) wherein Court has held as that:-

" It has to be noted, however, that beyond these calculations of figures, no further scrutiny was made by the Income-tax Officer or the Appellate Assistant Commissioner of the entries in the cash book of the appellants. The cash book of the appellants was accepted and the entries therein were not challenged. No further documents or vouchers in relation to those entries were called for, nor was the presence of the deponents of the three affidavits considered necessary by either party. The appellants took it that the affidavits of these parties were enough and neither the Appellate Assistant Commissioner, nor the Income-tax Officer, who was present at the hearing of the appeal before the Appellate Assistant Commissioner, considered it necessary to call for them in order to cross-examine them with reference to the statements made by them in their affidavits. Under these circumstances it was not open to the Revenue to challenge the correctness of the cash book entries or the statements made by those deponents in their affidavits.

This being the position, the state of affairs, as it obtained on 12th January, 1946, had got to be appreciated, having regard to those entries in the cash books and the affidavits filed before the Appellate Assistant Commissioner, taking them at their face value. The entries in the cash books disclosed that, taking the number of high denomination notes at 18 on 2nd January, 1946, there came in the custody or possession of the appellants after 2nd January, 1946, and up to 12th January, 1946, 49

further notes of that high denomination, making 67 such notes in the aggregate, out ofwhich 61 such notes could be encashed by the appellants on 18th January, 1946, through the Eastern Bank. A mere calculation of the nature indulged in by the Income-tax Officer or the Appellate Assistant Commissioner was not enough, without any further scrutiny, to dislodge the position taken up by the appellants, supported as it was, by the entries in the cash book and the affidavits put in by the appellants before the Appellate Assistant Commissioner."

Considering the reconciliation and cash flow statement filed by the assessee along with family settlement deed and affidavit of assessee's wife, wherein she owned responded of having deposited of cash out of her owned source and saving., Therefore, without controverting the fact stated of affidavit by the wife of the assessee, the addition made by the lower authorities even for an amount of Rs. 12,87,100/-is also not sustainable in the hands of the assessee and therefore, the same is directed to be deleted."

Here also the same position

3. Further it is submitted that as assessee a regular IT assessee, he is filing his ITR regularly. He is declaring the income u/s form House

Property, JCB Heiring and other. And in this a person can easily save this amount of cash of Rs.4,40,000/- for deposit in cash in Bank from his own source. In support we are enclosing herewith the copies of ITR of this year (PB1-3), where assessee has declared the gross income of Rs.7,48,800/- and the ld. has not given credit of a single Rupees when he has accepted and assessed the same. Further we also enclosed the ITRs of earlier years (PB39-42). That is why during the course of hearing, the assessee also submitted that the same was paid from cash balance. The ld. AO has proceed on mere assumption and suspicion. *I*t is very general that a person who is earning from so many years can have such cash amount. The claim of explained cash is very reasonable considering the past years income, past savings from drawings, gifts, social ceremonies etc. The claim is very reasonable. Hence according to us, such amount of declared cash claimed by the assessee is fully acceptable as available from the declared sources. It is not possible and acceptable that no one person is having any savings, pin or pocket money etc. And the AO did not give the credit of the same. By stating that the assessee has not furnished the evidence. Here we would like to submit that while doing a judicious act by a person (here the AO) should also keep in mind the circumstance, facts, general approach, status etc. . He should not restrict to himself only to the evidence where the same is not possible. Here the AO restricted to himself only evidence and ignored the circumstance, facts, general approach, status etc. Kindly refer the decision of Mange Ram Mittal v/s ACIT 105 TTJ 594(Del)(SB) Hence we pray your owner to consider our contention in the interest of natural Justice and delete entire addition.

On this preposition we would like to draw your kind attention on the decision of Honble ITAT in the case of Smt. Anjna Sharma v/s ITO in ITA No. 1214/Jp/2019 dt.25.11.2021. where in it has been held
" 15. After looking and considering all the above facts and details, we have observed and found that from starting the assessee has explained the source of cash Rs. 11,00,000/- from her husband Shri Naveen Sharma ofRs. 8,50,000/- and Rs. 2,50,000/- from her own. As we have noted that the assessee and her husband are regular income tax assessee and filing their return of income since AY 2005-06. As per record available before us and as per returns of the assessee, the assessee has shown income of Rs. 12.30 lacs and if it is presumed that a female can easily save 50% of her income and 50% can be treated for drawings. According to that she can have source to the extent of Rs. 6.15 lacs thus the source of amount shown by the assessee of purchase of property can be treated explained. Further the husband of the assessee Shri Naveen Sharma who has given cash of Rs.8.50 Lacs to the assessee (wife) for purchasing of the property in question. As Naveen Sharma since starting accepting and confirming that he had given cash of Rs. 8.50 lacs to her wife for purchasing of the property even before the issuance of notice U/s 148 of the Act. During

the enquiry U/s133(6) vide letter dated 14/08/2014, PB-35 to the ITO, Intelligence-II,Jaipur also filed the balance sheet of Naveen Sharma which is at page No.37 of the paper book. Further the assessee has also filed copy of affidavits and their identifications (PB 112-144) of the persons from whom they have taken cash loans. Thus the assessee has fully explained the source of Rs.11,00,000/- with the evidences filed before them and discharged the onus lay upon her. Thus, in our view, no additions can be made until and unless the evidences filed by the assessee were rebutted and discarded and by bringing any contrary evidences and materials and no addition can be made on the basis of assumption/ presumptions and guess work. Further when the husband of the assessee from the starting has confirmed of giving cash of Rs. 8.50 lacs as he is a regular income tax assessee and all the data given by him were very well available before the AO. Therefore, on the basis of the documents, no addition could be made. If the A.O. was having any doubt regarding the source of cash of Rs. 8.50 lacs by the Shri Naveen Sharma (Husband of the assessee) he could have made the addition in his hands but not in the hands of the assessee. Thus, in view of the above discussion as well as material placed on record, we found merit in the contention of the ld. AR and hence we directed to delete the addition of Rs.9,00,000/- sustained by the Ld. CIT (A). We order accordingly.

16. In the result, this appeal of the assessee is partly allowed"

Here also the same position. Hence the addition so made may kindly be deleted in full.

4. Double Tax of same income: Further not giving the credit of income shown during the year by the assessee against the addition made is tantamount of double tax of same income one under income of the assessee declared in the ITR and assessed by him second by making the separate additions. These are not permissible in law and liable to be deleted in full.

5. The observation of the lower authorities are wrong, when the lower authorities has rebutted the contentions and details by brining any contrary evidence except the suspicion and presumption. Thus the observation based on assumption, presumption and suspicion and his own guess work and it is the settled legal position of law that suspicion may be strong however cannot take the place of reality, are the settled principles kindly refer Dhakeshwari Cotton Mills 26 ITR 775 (SC) also refer R.B.N.J. Naidu v/s CIT 29 ITR 194 (Nag), Kanpur Steel Co. Ltd. v/s CIT 32 ITR 56 (All).Also refer CIT v/s Kulwant Rai 291 ITR 36(Del). In CIT v/s Shalimar Buildwell Pvt Ltd 86 CCH 250(All) it has been held that the AO made the addition merely on suspicion which was not desirable in the eye of law.

6. Addition on account of unsecured loan cannot be made u/s 69A: Further the ld. AO has made the addition of Rs.6,20,000/- which have been received by the assessee as unsecured loan from various person u/s 69A which is invalid as the addition if any was to be made u/s 68 not u/s 69A. Hence the addition of this amount u/s 69A is illegal, invalid, void-ab-initio and liable to be deleted.

7. Further the observations of the ld. AO that he was having the debit balances in the loan account and not paid the loan account despite having cash. In this regard it is submitted that there is no meaning of these observation, because it is to be seen by businessmen. And it is to be seen when the loan is to be taken, when the same is to be paid, a businessmen is also had some cash in hand for running the business for the sudden emergency, a person would not like to pay unnecessary interest and the ld. AO has ignored these modus operandi of business.

8. Hence in view of the above facts and circumstances and legal position of law the addition so made may also kindly be deleted in full and oblige."

6.1 In support of the contentions so raised by the ld. A/R in the written submission, reliance was also placed on the following evidences / records / orders :

S. No.	Particulars	Page No.
1.	Copy of IT Return with computation of total income	1-3
2.	Copy of Letter to ITO dt. 02.12.2019	4-5
3	Copy of Notice u/s 142(1) dt. 07.10.2019.	6-10
4.	Copy of Letter from ITO Ward 2(3), Alwar dt. 14.03.2017. Cash Transaction and reply thereof.	11-16
5.	Copy of Notice u/s 142 and Show Cause notice dt. 27.08.2019, 13.11.2019 and 29.11.2019.	17-21
6.	Copy of Letter to ITO dt. 25.11.2019, 16.10.2019	22-24
7.	Copy of Bank A/c Statement	25-37
8.	Copy of Summons u/s 131 No. 1841 dt. 17.03.2017 to Assessee	38
9.	Copy of IT Return for AY 2013-14, 2014-15, 2015-16 and 2016-17	39-42

7. On the other hand, the ld. DR supported the orders of the lower authorities. The ld. DR submitted that inspite of various

opportunities afforded by the ld. CIT (A), the assessee has failed to furnish necessary documents in respect of the cash deposits in the demonetization period. Therefore, the ld. CIT (A) has rightly sustained the addition made by the AO.

8. We have heard the rival contentions and perused the material placed on record. From the assessment order we find that the assessee has deposited a sum of Rs. 10,60,000/- in his bank account during demonetization period. In response to show cause notice dated 29.11.2019, the assessee vide letter dated 02.12.2019 submitted that Rs. 6,00,000/- deposited out of cash loan from various persons for which statements were already recorded. The ld. A/R of the assessee along with the written submission placed before us, submitted a list of 33 persons from whom cash loans amounting to Rs. 6,20,000/- was received by the assessee and the same was deposited in the bank account of the assessee. In support, the assessee has filed the Affidavit stating therein that he had received this amount before demonetization period which were deposited in the bank account during the demonetization period. The assessee in his affidavit further stated that while making enquiries by the department in respect of this

transaction, he had filed the Affidavits of all the 33 persons as per list submitted, however, inadvertently has not kept the copies of the Affidavits of the 33 persons. The fact that the assessee has submitted affidavit of all the person was declared on oath vide affidavit dated 21.07.2025 and the revenue did not challenged that contention of the assessee. It has also been submitted that he had filed application to the AO for certified copies but till date copies of those Affidavits, were not received. As is evident from the record all these persons from the assessee taken the loan have filed their affidavit and as held by the Apex Court in the case of Mehta Parikh & Co. v. CIT [1956] 30 ITR 181 (SC), that “if there is no material whatsoever on record for doubting the veracity of the statements made in the affidavits and if the deponents have also not been subjected to cross-examination for bringing out the falsity of their statements, then the Tribunal would not be justified in doubting the correctness of the statements made by the deponents in the affidavits.” So respectfully following that binding precedent which is supported by an affidavit and the same being not disputed by the revenue we have no reason not believe the source of cash deposit and thereby there is no reason to sustain the addition.

Even otherwise and without prejudice to those facts the assessee further explained that the assessee had tower rental income of Rs. 72000/-, JCB hire income of Rs. 396000/- and house property rental income of Rs. 216000/-, and out of this income assessee deposited remaining cash in the bank account i.e. Rs.400000 + 20000 + 40000 = 460000/-. Keeping in view all these facts narrated above, we are of the considered view that the appellant discharged its onus in explaining the source of cash deposit of Rs. 10,60,000/- in bank account during demonetization period and nothing adverse has been brought on record by the A.O through ld. DR and therefore we are of the considered view that the addition made by AO and confirmed by ld. CIT (A) for Rs. 10,60,000/- on account of cash deposit into bank account is not sustainable and thereby we direct to delete the same.

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

Order pronounced in the open Court on 30 /09/2025.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखासदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 30 /09/2025

*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Sh. Kailash Chand Meena, Alwar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(3), Alwar.
2. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 101/JPR/2025 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar